

DOCKET NO. WWM-15-6009136S

MELANIE PEREZ : SUPERIOR COURT
VS. : JUDICIAL DISTRICT OF
WINDHAM AT PUTNAM
STATE OF CONNECTICUT,
JUDICIAL DEPARTMENT : NOVEMBER 4, 2016

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION TO SEAL

Plaintiff hereby submits this Memorandum in support of her Motion to Seal filed herewith.

By way of the Motion to Seal, Plaintiff seeks to seal and/or redact Exhibit s that are attached to Plaintiff's Opposition to Defendant's Motion for Summary Judgment that contain medical information and/or personnel information of other employees employed by Defendant. Plaintiff has an overriding interest in the confidentiality of the information contained in these exhibits justifying an Order of the Court sealing them.

Defendant does not oppose the sealing of these documents.

**THE COURT SHOULD ORDER SEALING OF THE DOCUMENTS AT ISSUE
PURSUANT TO PRACTICE BOOK § 11-20A(c)**

Pursuant to Practice Book § 11-20A(c), the Court "may order that files, affidavits, documents, or other materials on file or lodged with the court or in connection with a court proceeding be sealed or their disclosure limited only if the judicial authority concludes that such order is necessary to preserve an interest which is determined to override the public's interest in viewing such materials." Here, the order sealing the exhibits is necessary to preserve Plaintiff's interest in the confidentiality of private medical information, which overrides the public's interest in viewing that information.

PLAINTIFF'S INTEREST IN THE CONFIDENTIALITY OF HER MEDICAL INFORMATION OVERRIDES THE PUBLIC INTEREST IN VIEWING THE MATERIAL

The interest at state here – the confidentiality of Plaintiff's medical information – is, without question, one that is protected by law. An individual's interest in maintaining the confidentiality of her private medical information is so overriding an interest that it has been codified in both state and federal law. The important interest in preserving the confidentiality of an individual's medical information has been codified in HIPAA, the Health Insurance Portability and Accountability Act, 42 U.S.C. § 1320d, et seq. Likewise, Conn. Gen. Stat. 52-146o articulates a privilege applicable to communications between a patient and a physician or other health care provider. That privilege is applicable to the information contained within the documents Plaintiff seeks to seal. The clear public policy in favor of the interest at issue here demonstrates that it is a compelling interest. On the other hand, the public's interest in accessing Plaintiff's private medical information is minimal.

An individual's substantial privacy interest in his or her medical records and information has been recognized by Connecticut courts as an interest overriding the public interest in disclosure of those documents and justifying sealing of such records and information. "Judges of the Superior Court have found that an individual's privacy interest in his medical records may override the public's interest in open judicial proceedings. See *Noll v. Hartford Roman Catholic Diocesan Corp.*, Superior Court, judicial district of Hartford, Docket No. CV-02-4034702-S (September 16, 2008, Shapiro, J .) (citing Health Insurance Portability and Accountability Act of 1996 [HIPAA] and concluding that public had only limited interest in deponent's personal medical information but deponent had substantial privacy interest in keeping such information

confidential); accord *Tauck v. Tauck*, Superior Court, judicial district of Middlesex, Docket No. FA-05-4004889-S (September 21, 2007, Abery-Wetstone, J.) (granting motion to seal where disclosure of parties' medical records might discourage them from seeking treatment). In the present motion to seal, the defendant relies on HIPAA as support for his asserted interest in maintaining the privacy of his medical information.” *Cavalry SPVI I, LLC v. Underkofler*, 2014 WL 683873 at *3 (Conn. Super. Jan. 24, 2014).

Furthermore, the parties to this matter previously agreed to treat, inter alia, medical information and records as confidential, which agreement was submitted in a proposed Protective Order which was approved by the court. While an agreement between the parties to limit disclosure does not alone constitute sufficient basis for an order sealing documents, judges of the Superior Court have considered such agreement in granting motions to seal or limit disclosure. See *Cavalry SPV I, LLC v. Underkofler*, *supra*, at *3. The Court here should likewise consider the agreement of the parties as a factor in support of sealing these documents.

The information contained in the documents Plaintiff wishes to seal and/or redact are not otherwise disclosed or discussed in other documents filed with the Court and is unlikely to be so discussed given that any medical records or information in this matter are governed by the Protective Order in place in this matter. (Doc. No. 125.00).¹

¹ Plaintiff notes that judges of the Superior Court have, on occasion, denied requests for sealing of medical records. However, those instances involve information sought to be sealed which was otherwise available in the public domain or which had been extensively disclosed through public filings for which sealing was not sought. See e.g. *Sienkiewicz v. Ragaglia*, Superior Court, judicial district of Fairfield, Docket No. CV-10-6008363 (March 2, 2011, Arnold, J.) (denying motion to seal where parties' filings and court's decisions in prior action contained materially all information sought to be sealed in current action)

In addition to the fact that Plaintiff, as any citizen, has an overriding interest in the confidentiality of her medical information, Plaintiff is a probation officer within the Judicial Branch and is rightly concerned regarding the availability of her confidential medical information to the public, particularly its easy availability on the electronic docket.

**SEALING THE DOCUMENTS IS NOT BROADER THAN NECESSARY TO
PROTECT PLAINTIFF'S OVERRIDING INTEREST IN THE CONFIDENTIALITY OF
HER MEDICAL INFORMATION**

Plaintiff seeks only to seal one exhibit in its entirety relating to her confidential medical information. Plaintiff's request is narrowly tailored and is no broader than necessary to protect her overriding privacy interest in her medical information.

Practice Book § 11-20A(c) also states that "The judicial authority shall first consider reasonable alternatives to any such order and any such order shall be no broader than necessary to protect such overriding interest." Here, the sealing of this exhibit is not broader than necessary to protect Plaintiff's overriding privacy interest in

and *O'Dell v. Greenwich Healthcare Services, Inc.*, Superior Court, judicial district of Stamford–Norwalk, Docket No. CV–11–6008364–S (April 25, 2013, Adams, J.)(denying motion to seal where information sought to be sealed was thoroughly and extensively discussed in other memoranda and pleadings). Unlike those cases, Plaintiff here has not voluntarily placed the medical information in the public domain except through inadvertent disclosure in the documents she now seeks to have sealed. The medical information contained in the documents Plaintiff seeks to seal is not otherwise contained in any document or pleading filed with the Court. Because the contents of the medical information Plaintiff seeks to seal were not otherwise part of the filings in this matter, sealing is appropriate. *Provost-Daar v. Merz Aesthetics, Inc.* 2016 WL 720488 at * (Conn. Super. January 29, 2016)(granting motion to seal medical records where "plaintiff's privacy interest in the information in the medical documents overrides the public's interest in viewing the material"). Likewise, as in *Provost-Daar*, the agreement by the parties to treat medical information as confidential information by way of a protective order approved by the Court (Doc. No. 118.00) is instructive. Other than through the inadvertent disclosure in the documents Plaintiff now seeks to seal, the contents of the medical information Plaintiff seeks to be sealed has never been discussed in any filings with the Court excepting a basic description of Plaintiff's hearing disability in her Complaint.

the confidentiality of her medical information and the medical and personnel information of others.

WHEREFORE, for all of the foregoing reasons, Plaintiff respectfully requests that the Court GRANT her Motion to Seal.

PLAINTIFF,
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CERTIFICATION OF SERVICE

This is to certify that a copy of the foregoing was sent by first class mail on this 4th day of November, 2016 to the following counsel of record:

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s/
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